

This letter sets forth how a standard drop-shipment transaction is treated in Illinois for Retailers' Occupation Tax and Use Tax purposes. See 86 Ill. Adm. Code 130.1405. (This is a GIL).

July 29, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated June 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We have a customer located in Georgia that requested we drop ship to their customer in Illinois. Our customer in Georgia doesn't have nexus for Illinois, however COMPANY does. We will be invoicing our customer in Georgia, and they will be invoicing the Illinois customer. I need to know who is required to supply an exemption certificate.

Thank you for your assistance, please don't hesitate to call me.

In your letter, you have set out a drop-shipment situation in which an out-of-State seller registered with Illinois (Company A) makes a sale to another out-of-State company that is not registered with Illinois (Company B) and drop-ships the items to Company B's customer (Company C) located in Illinois.

As an out-of-State seller required to collect the Illinois tax, Company A must either charge tax or document an exemption when it makes a delivery in Illinois. In order to document the fact that its sale to Company B is a sale for resale, Company A is obligated under Illinois law to obtain a valid Certificate of Resale from its customer, Company B. Certificates of Resale must contain the following information:

1. a short statement from the purchaser (Company B) that the items are being purchased for resale;
2. seller's (Company A's) name and address;
3. purchaser's (Company B's) name and address;
4. purchaser's signature and date of signing;
5. a sufficient identification of the items purchased for resale; and
6. purchaser's registration number with the Illinois Department of Revenue, or

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purchaser's resale number issued by the Illinois Department of Revenue.

If Company B has no nexus whatsoever with Illinois, it is unlikely that Company B would be registered with Illinois. If that is the case, and if Company B has no contact with Illinois that would require it to be registered as an out-of-State Use Tax collector for Illinois, then Company B could obtain a resale number that would provide it the wherewithal to supply a required number to Company A in conjunction with a Certificate of Resale. We hope the following descriptions of out-of-State sellers required to register, either as Illinois retailers or as out-of-State Use Tax collectors and persons who qualify for resale numbers will be useful.

Assuming a delivery in Illinois, an Illinois retailer is anyone who either accepts purchase orders in Illinois or who sells items of tangible personal property that are located in Illinois at the time of sale. See 86 Ill. Adm. Code 130.605(a), enclosed. So long as Company B does not accept purchase orders in Illinois, and so long as the items it sells are not located in Illinois at the time it sells them, it need not register as a retailer.

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code 150.201(i), enclosed) must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code 150.801(c), enclosed. Please note that out-of-State sellers with any kind of agent in Illinois (not just sales or lease agents) are required to register as out-of-State Use Tax collectors. If Company B has no contact with Illinois, it does not fall within the definition of a "retailer maintaining a place of business in this State," and it need not register as an out-of-State Use Tax collector.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as Company B does not act as an Illinois retailer and, so long as it does not fall under the definition of a "retailer maintaining a place of business in this State," its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and it cannot be required to act as a Use Tax collector. So long as this is true, Company B qualifies for a resale number that does not require the filing of tax returns with the Illinois Department of Revenue.

Please note that the fact that Company B may not be required to act as a Use Tax collector for Illinois does not relieve its Illinois purchaser of Use Tax liability. Therefore, if Company B does qualify for a resale number, Company C would have to pay its tax liability directly to the Illinois Department of Revenue.

Illinois legislation has modified the requirements of Certificates of Resale. While active registration or resale numbers on Certificates of Resale

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are preferred, Section 2c of the Retailers' Occupation Tax Act provides as follows:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale."

Again, a registration or resale number from Company B on a Certificate of Resale is the preferred method for documenting that its purchase from Company A is a purchase for resale. However, in light of this statutory provision, a certification from Company B on a Certificate of Resale in lieu of a resale number that described the drop-shipment situation and the fact that Company B has no contact with Illinois that would require it to be registered and that it chooses not to obtain an Illinois resale number would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. See 86 Ill. Adm. Code 130.1405(d), enclosed. The risk run by Company A in accepting such a certification and the risk run by Company B in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale that does not contain a valid resale number and require that more information be provided by Company A as evidence that the particular sale was, in fact, a sale for resale.

While the above method is permitted under law, it is not recommended. Therefore, as the seller, Company A runs the risk of incurring liability on such sales. It is the purchaser's responsibility to properly document an exemption. If Company A, as the seller, does not feel as though such "other evidence" is sufficient to document the sale for resale, and to subsequently protect its interests, Company A may charge tax, the same way it does when any other customers fail to meet their obligation of documenting an exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.